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AIRLINES REPORTING CORPORATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AIRLINES REPORTING CORPORATION,

Plaintiff,

v.

COMMERCIAL TRAVEL CORPORATION
d/b/a MATLOCK TRAVEL, et al.,

Defendants.

Case No. 08-MC-00088

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION FOR ATTORNEY'S FEES AND
COSTS PURSUANT TO FEDERAL RULES
OF CIVIL PROCEDURE, RULE 54(d)(2)(A)**

Date: September 22, 2008
Time: 3:30 p.m.
Ct rm: 1, 4th Floor
Judge: Hon. Irma E. Gonzalez

INTRODUCTION

Plaintiff AIRLINES REPORTING CORPORATION (Plaintiff "ARC") submits the following Memorandum of Points and Authorities in support of its Opposition to Defendant MARIO RENDA's (Defendant "Renda") Motion for Attorneys Fees and Costs based upon the following facts and law.

FACTUAL BACKGROUND

The Reporting Agreement. Plaintiff ARC serves as a national clearinghouse for issuing documents and other forms ("ARC traffic documents") to travel agents to be used as air passenger tickets by the travel agents' customers. ARC maintains an agency list of persons and entities accredited to serve as travel agents and to issue ARC traffic documents Plaintiff ARC is a federally controlled entity tasked with managing all U.S. civilian airline ticketing and documentation for airline reservations and travel. See Sampson Declaration and Court Records.

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In performing this duty, it is Plaintiff ARC's regular practice to enter into Agent Reporting Agreements ("ARA") with the travel agent entities that are accredited to issue ARC traffic documents. The ARA governs the issuance of ARC traffic documents. It is also ARC's regular practice to maintain an agency list of persons and entities actively qualified to serve as travel agents and issue the ARC traffic documents. Id.

In or around 1999, ARC had a good faith belief that Defendant Renda, among others, acquired Defendant Commercial Travel Corporation dba Matlock Travel and dba Costa Travel from Thomas Carter, Stephanie Carter and Thomas S. Carter. See Court Records.

Based upon that belief, Plaintiff ARC brought suit against, *inter alia*, Defendant Renda for violating the ARA, alleging claims for relief for breach of contract, breach of fiduciary duty, conversion, fraud, statutory conspiracy, common law conspiracy, and unjust enrichment. See Court Records.

The Virginia Judgment. Defendant Renda failed to answer in the time allotted under the law. As a result, on September 4, 2007, the United States District Court, Eastern District of Virginia, entered judgment by default in favor of Plaintiff ARC and against, *inter alia*, Defendant Renda. Judgment was entered in the principal sum of \$701,942.81. Thereafter, ARC caused the default judgment to be registered in this Court. See Court Records.

Plaintiff's Motion for An Assignment Order. Based upon the foregoing, on April 17, 2008, Plaintiff filed and served its motion for an assignment order, requesting the Court order any proceeds now due, or to become due to Defendant Renda as a result of the Renda v. Nevarez, matters, be assigned to Plaintiff until the judgment in this matter is paid in full. See Court Records.

Defendant's Motion to Vacate Judgment. In response, Defendant filed his motion requesting the Court vacate the Judgment, alleging the Virginia court did not have personal jurisdiction over Defendant Renda based upon the Order dismissing Defendant Renda for lack of personal jurisdiction, entered without prejudice in the Virginia federal action, Airlines Reporting Corp. v. UniGlobe Fairway Travel, Inc., et al. See Court Records.

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1 Additionally, Defendant vigorously argued that he was not, nor had he ever been, an employee,
 2 officer, director, chairman, principal, financier, or shareholder of any entity that was a party to the
 3 ARA, including Defendant Commercial Travel Corporation. In addition, Defendant defiantly stated
 4 he has never, in any manner whatsoever, been involved in any business dealings with any entity that
 5 had entered into an ARA with Plaintiff ARC. See Court Records.

6 **LEGAL ARGUMENT**

7 **1. Defendant Did Not Meet His Burden That He Is Entitled To Costs And Attorney's** 8 **Fees.**

9 Under Virginia law, *parties* to a contract may adopt provisions that permit the prevailing party
 10 to recover its reasonable attorney's fees and costs. Ulloa v. QSP, Inc., 271 Va. 72, 81 (2006) [emphasis
 11 added]. Additionally, any attorney's fees awarded based upon the language of a contract must comport
 12 with the express language of the parties agreement. Id at 82. Finally, under Virginia law a party
 13 "cannot assert a claim for attorney's fees in Virginia until they prevail on the merits on the substantive
 14 breach of duty issue arising under their contract, which is the fundamental issue underlying the parties'
 15 dispute." Miller v. Becker, 2007 Va. Cir. LEXIS 242, *7 (2007).

16 Defendant Renda Expressly Denies Being A Party To The ARA. Defendant Renda adamantly
 17 denies being a "party to the contract." See Court Records. It is incongruous for Defendant Renda to
 18 now allege he is an "Agent" entitled to the benefit of the bargain of an agreement he adamantly
 19 disavows. As such, Defendant has not met his burden of proof that he is an "Agent" under the ARA
 20 and entitled to attorney's fees and costs based upon the agreement.

21 The ARA Does Not Provide For Fees & Costs In This Proceeding. Even if the Court determines
 22 that Defendant Renda is an Agent and entitled to assert the contractual fee provision of the ARA, as
 23 previously stated, any attorney's fees awarded based upon the language of a contract must comport
 24 with the express language of the parties agreement. Ulloa, 271 Va. at 82. The ARA is governed by
 25 Virginia law. See Exhibit "A," Sec. XXXI, The ARA expressly provides as follows:

26 If ARC uses legal counsel to (i) enforce its right to possession of ARC
 27 traffic documents (paper format) and airline identification plates,
 28 because the Agent failed or refused to surrender them upon demand
 made pursuant to this agreement, and/or (ii) to otherwise obtain
 compliance by the Agent with the provisions of this section, the Agent

1 shall reimburse ARC for all costs incurred by it, and for the reasonable
 2 fees of its attorneys, if its action is adjudicated or otherwise resolved in
 3 its favor. If its action is adjudicated or otherwise resolved in favor of
 4 the Agent, ARC shall reimburse the Agent for all costs incurred by it,
 5 and for the reasonable fees of its attorneys, in defending itself against
 6 ARC's action... .

7 See Exhibit "A," Sec. XI E.

8 In other words, and in compliance with Virginia law, the "action" concerning the breach of the
 9 duty imposed by the ARA, must be adjudicated or determined in favor of the party seeking its costs and
 10 fees. See Miller, 2007 Va. Cir. LEXIS at *7. Here, the Court vacated the judgment based upon the
 11 Virginia District Court not having personal jurisdiction over the Defendant. See Court Records. As
 12 such, the "action" on the contract was not adjudicated and/or determined in Defendant Renda's favor
 13 and Defendant is not entitled to costs and attorney's fees under Virginia law, or the express provisions
 14 of the ARA.

15 **2. Awardable Costs And Fees Are Strictly Governed By The Language Of The**
 16 **Contract.**

17 Even if the Court determined that Defendant Renda is entitled to attorney's fees and costs under
 18 the ARA, Defendant is not entitled to his attorney's fees and costs for post judgment proceedings. As
 19 previously stated, attorney fee awards are governed by the express language of the contract. Ulloa, 271
 20 Va. at 82. The ARA does not, in any manner whatsoever, provide for attorney's fees and costs for post
 21 judgment proceedings. In addition, Plaintiff ARC could find no Virginia legal authority that authorizes
 22 post judgment costs and/or attorney's fees based upon a contractual fee provision. See Sampson
 23 Declaration.

24 All attorney's fees and costs incurred by Defendant were based upon post judgment motions
 25 and/or proceedings. Specifically, Defendant moved for an ex parte order to stay enforcement of the
 26 judgment, opposed a post judgment motion for an assignment order, which Plaintiff brought pursuant
 27 to Federal Rules of Civil Procedure Rule 69 and California Code of Civil Procedure §708.510, and
 28 moved to vacate the judgment pursuant to Federal Rules of Civil Procedure, Rule 60. See Court
 Records. Virginia law does not permit, and the ARA does not encompass any award for post judgment
 costs and fees. Thus, Defendant Renda is not entitled to attorney's fees and costs in this matter.

CONCLUSION

Based upon all of the foregoing, Plaintiff ARC respectfully requests that this Court deny Defendant's motion for attorney's fees and costs in its entirety.

Respectfully submitted,

DATED: September 5, 2008

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